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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

**In re FRANCISCO R., a Person Coming Under
the Juvenile Court Law.**

THE PEOPLE,

Plaintiff and Respondent,

v.

A145649

**(Mendocino County
Super. Ct. No.
SCUKJDSQ151707802)**

FRANCISCO R.,

Defendant and Appellant.

_____/

Francisco R. (the minor) admitted committing felony vandalism (Pen. Code, § 594, subd. (b)(1))¹ and the juvenile court declared him a ward of the court (Welf. & Inst. Code, § 602). The court placed the minor on probation and imposed various conditions, including that he: (1) “not possess, consume, or ingest any over the counter product or medication, prescribed or otherwise that has a potential to alter the senses or threaten the health of the minor if used beyond its recommended or prescribed dosage” (drug prohibition); and (2) “not associate with anyone who is known to be using or possessing any illegal intoxicants, narcotics, or drugs” (association prohibition).

¹ Unless noted, all further statutory references are to the Penal Code.

The minor appeals, contending the drug and associational prohibitions are unconstitutionally vague and overbroad, and that they lack a knowledge requirement. We modify these prohibitions to impose a knowledge requirement. As modified, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The facts are taken from the detention and probation reports. In May 2015, the minor “ripped out” the steering column and electrical wires from his stepfather’s car. The minor had a history of “substance abuse including alcohol and marijuana[;]” his relatives were “afraid” of him and did not believe they could “control him” at home.

The prosecution filed a Welfare and Institutions Code section 602 petition alleging the minor committed felony vandalism (§ 594, subd. (b)(1)).² The minor admitted the allegation (§ 594, subd. (b)(1)) and the court adjudged him a ward of the court (Welf. & Inst. Code, § 602). At the dispositional hearing, the court imposed various probation conditions, including the drug and association prohibitions. The minor’s counsel did not object to the probation conditions.

DISCUSSION

The minor contends drug and association prohibitions are unconstitutionally vague and overbroad, and that they lack a knowledge requirement.

I.

General Principles

A juvenile court placing a ward on probation “may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.” (Welf. & Inst. Code, § 730, subd. (b); *In re Sheena K.* (2007) 40 Cal.4th 875, 889 (*Sheena K.*)). The scope of the juvenile court’s discretion in formulating terms of a minor’s probation is greater than that allowed for adult probationers “[b]ecause wards are thought to be more

² Two previous Welfare and Institutions Code section 602 petitions alleged the minor committed first degree burglary (§§ 459, 460), felony and misdemeanor vandalism (§ 594), and misdemeanor battery (§ 242).

in need of guidance and supervision than adults and have more circumscribed constitutional rights, and because the juvenile court stands in the shoes of a parent when it asserts jurisdiction over a minor[.]” (*In re D.G.* (2010) 187 Cal.App.4th 47, 52 (*D.G.*).) The juvenile court’s discretion, however, is not absolute. (*In re Victor L.* (2010) 182 Cal.App.4th 902, 910 (*Victor L.*).)

A probation condition will be stricken as unreasonable if it: “(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. . . .” [Citation.]” (*People v. Lent* (1975) 15 Cal.3d 481, 486; *D.G.*, *supra*, 187 Cal.App.4th at pp. 52-53.) In addition, a juvenile court must not impose constitutionally vague conditions. (*Sheena K.*, *supra*, 40 Cal.4th at pp. 889-891.) To withstand a vagueness challenge, “[a] probation condition ‘must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated[.]’” (*Id.* at p. 890, quoting *People v. Reinertson* (1986) 178 Cal.App.3d 320, 324-325.) “‘The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant’s constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.’ [Citation.]” (*People v. Pirali* (2013) 217 Cal.App.4th 1341, 1346.)

We review the minor’s constitutional challenges to the drug and association prohibitions de novo notwithstanding his failure to object in the juvenile court. (*Sheena K.*, *supra*, 40 Cal.4th at p. 888; *Victor L.*, *supra*, 182 Cal.App.4th at p. 907.)

II.

The Drug Prohibition Must be Modified

As stated above, the drug prohibition precludes the minor from possessing, consuming, or ingesting “any over the counter product or medication, prescribed or otherwise that has a potential to alter the senses or threaten the health of the minor if used beyond its recommended or prescribed dosage[.]” The minor contends this prohibition is

vague and overbroad because it precludes him from taking “most over-the-counter medications” and that it lacks a knowledge requirement. The minor suggests the drug prohibition be modified to add a knowledge requirement; the Attorney General does not oppose such a modification.

The California Supreme Court is considering whether probation conditions prohibiting the possession of illegal drugs and paraphernalia must include an explicit knowledge requirement. (See *People v. Hall* (2015) 236 Cal.App.4th 1124, review granted Sept. 9, 2015, S227193 [prohibiting possession or use of “illegal drugs, narcotics”] and *People v. Gaines* (2015) 242 Cal.App.4th 1035, review granted Feb. 17, 2016, S231723 [prohibiting use or possession of “any narcotics, dangerous drugs or narcotic paraphernalia”].) While awaiting guidance from our high court, we will act on the side of caution and will modify the drug prohibition to include an explicit knowledge requirement, i.e., that minor “not *knowingly* possess, consume, or ingest any over the counter product or medication, prescribed or otherwise, in amount *he knows or should know* will alter his senses, or threaten his health if used beyond its recommended or prescribed dosage.”

II.

The Association Prohibition Must be Modified

As stated above, the association prohibition requires the minor “not associate with anyone who is known to be using or possessing any illegal intoxicants, narcotics, or drugs[.]” The minor contends this prohibition is unconstitutionally vague and overbroad, and that it lacks a knowledge requirement. The California Supreme Court is considering whether a no contact probation condition must include an explicit knowledge requirement. (*In re A.S.* (2016) 245 Cal.App.4th 758, review granted Sept. 9, 2015, S227193.) While we wait for guidance from our high court, we will act on the side of caution and will modify the association prohibition to require the minor “not associate with anyone *known to him* to be using or possessing any illegal intoxicants, narcotics, or drugs.” (See, e.g., *In re H.C.* (2009) 175 Cal.App.4th 1067, 1071 [probation condition prohibiting association with any “known probationer, parolee, or gang member”]

modified to include personal knowledge requirement, since the word “known” did not specify who must have knowledge of the prohibited associate’s status].)

DISPOSITION

The drug prohibition in probation condition 13 is modified to read: “the minor shall not knowingly possess, consume, or ingest any over the counter product or medication, prescribed or otherwise, in an amount he knows or should know will alter his senses, or threaten his health if used beyond its recommended or prescribed dosage[.]”

The association prohibition in probation condition 13 is modified to read: “the minor not associate with anyone known to him to be using or possessing any illegal intoxicants, narcotics, or drugs[.]” As modified, the judgment is affirmed.

Jones, P.J.

We concur:

Simons, J.

Needham, J.